

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 524 of 1996

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1. Siddharaj
2. Rathnammal
3. Minor. Selvakumar
4. Minor. Geetha

Minors are son and daughter of
Late. Nagarajan, rep. By their
mother and guardian Rathnammal .. Appellants/Defendants

Versus

Dharmapuri Marketing Committee
Dharmapuri
rep. By its present Secretary
K. Ganesan
Dharmapuri .. Respondent/Plaintiff

Second appeal under Section 100 CPC against the decree and judgment dated 20.03.1995 made in A.S. No.12 of 1994 on the file of Subordinate Judge, Krishnagiri reversing the decree and judgment dated 10.04.1992 made in O.S. No. 28 of 1984 on the file of District Munsif Court, Hosur.

For Appellants : Mr. M.V. Krishnan

For Respondent : Mr. Mohammed Yousuf

JUDGMENT

The defendants 2 to 5 are the appellants in this second appeal. The first defendant namely Nagarajan died during the pendency of the suit and his legal heirs were impleaded as defendants 3 to 5 in the suit.

2. The respondent herein has filed the suit in O.S. No. 28 of 1984 on the file of District Munsif Court, Hosur for declaration to declare that they are the owners of the suit property, for recovery of possession, mandatory injunction for demolition of the temporary houses illegally put up by the appellants herein and for costs. The said suit was dismissed. The appeal filed by the respondent herein in A.S. No. 12 of 1994 on the file of Subordinate Judge, Krishnagiri was allowed thereby

the decree and judgment passed by the trial court was set aside, hence, the present second appeal.

3. The case of the appellants is that they have constructed their respective houses in one corner of the suit property, which is having an extent of 2.02 acres; that the said houses were constructed by them in the year 1968 i.e., 15 years prior to institution of the suit; that the house tax receipts and other documents issued in their favour would show that they are in continuous possession and enjoyment of the suit property with the knowledge of the respondent.

4. The case of the respondent is that the suit property was purchased by them under Ex.A1, sale deed dated 22.04.1982 from the Executive Officer of Arulmighu Parvatha Kasi Visveswarasamy Temple for a total consideration of Rs.91,800/- which was registered as document No. 449 of 1982. Even prior to completion of sale under Ex.A1, the possession of the property was delivered by the vendor to the respondent under Ex.A13 dated 07.07.1971. It is also the case of the respondent that prior to purchase, they have obtained encumbrance certificate Ex.A2, verified the title of the vendor and satisfied themselves that there is no encumbrance in the suit property. Even prior to completion of sale, the respondent issued Ex.A3, notice dated 27.05.1980 to the first defendant in the suit, which was received by him but no reply was given; that the notice under Ex.A5 dated 27.05.1980 issued to the first appellant herein was served but he has not chosen to give any reply; that the first defendant in the suit was employed in Electricity Department, hence, he managed to obtain electricity service connection to the temporary houses put up in the suit property.

5. Before the trial court, the respondent herein has marked Exs. A1 to A13 and one Ganesan, Chinnadurai, Basavaraj and Ramachandran were examined as Pws 1 to 4 respectively. On behalf of the appellants, Exs. B1 to B6 were marked and the first and second appellants examined themselves as Dws 1 and 2 and one Krishnamoorthy Rao, Kumar and Paneerselvam were examined as Dws 3 to 5 respectively.

6. Considering the oral and documentary evidence, the trial court dismissed the suit on the ground that even prior to Ex.A1, sale deed dated 22.04.1982, the appellants herein have constructed their respective houses in the suit property which was not objected to by the temple authorities nor any steps taken to evict them; that in the notices Exs. A3 and A5 dated 27.05.1980 issued to the appellants it is admitted by the respondent that the appellants have constructed the houses in the suit property; that in view of the fact that the temple authorities have not taken any action prior to Ex.A1, they are estopped from claiming any right in the suit property as contemplated under Section 115 of the Indian Evidence Act.

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7. The first appellate Court allowed the appeal preferred by the respondent herein on the ground that though the appellants

have admitted the fact that the temple is the owner of the suit properties, the buildings said to have been put up by them were without obtaining permission from the temple that too without sanctioned plan from the local body; that the buildings said to have been constructed in the year 1968 but Dw2 in his evidence stated that the buildings were constructed only in the year 1974, however the property tax receipts only from 1978 were produced. Further, no evidence was produced by the appellants to show that they are not aware whether the buildings were assessed to property tax or not. Moreover, in the written statement, the appellants have mentioned that the buildings were constructed by them in the suit property; that the delivery of possession by the temple authorities under Ex.A13 to the respondent is evident that possession was delivered by temple to the respondent, which is a public society; that the second defendant was a contractor who, while constructing adjacent building kept the building materials in the suit property and thereafter, he gradually and clandestinely encroached into the suit property and constructed the present super structure; that the first defendant was employed in Electricity Board, hence, he managed to obtain electricity service connection to the said superstructure. The first appellate Court further pointed out that the respondent herein has purchased the suit property for a valid consideration, hence, it is entitled to the relief of declaration, recovery of possession and mandatory injunction.

8. At the time of admission of this second appeal, the below mentioned substantial questions of Law are framed as arisen for consideration:-

- i) Whether the sale of the suit property by temple authorities in favour of the plaintiff under Ex.A1 dated 22.04.1982 without following the mandatory provisions of Section 34 of HR & CE Act is not valid?
- ii) Whether the sale of the suit property in favour of the plaintiff is vitiated by failure on the part of the plaintiff to prove the publication of the proposed sale?
- iii) Whether the plaintiff and its predecessors were not entitled to seek recovery of suit property from the defendant?

9. Mr. M.V. Krishnan, learned counsel appearing for the appellants submitted that the temple authorities permitted the appellants to construct a building and accordingly the appellants have constructed the same much prior to Ex.A1, while so, filing the suit for declaration and other reliefs is barred under Section 115 of Indian Evidence Act; that any long term lease, sale or encumbrance of the temple or endowment property could be done only in accordance with Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, but in this case, the sale deed, Ex.A1 was not executed with the previous permission of the Commissioner, HR & CE or with the permission of the Government of Tamil Nadu; that no publication was made prior to Ex.A1; that the

appellants were in possession of the suit property right from 1968; that Exs. B1 to B5 marked by the appellants prove that they are in continuous possession and enjoyment of the suit property, which were not taken note of by the first appellate Court while setting aside the well considered decree and judgment of the trial court and prayed for allowing the second appeal.

10. The learned counsel appearing for the respondent submitted that the appellants are trespasser and they have no right or interest to canvass that the sale deed Ex.A1 is invalid; that the provisions of Section 115 of Indian Evidence Act cannot be made applicable in this case since no promise is made by either the temple authorities or the respondent to the appellants and prayed for dismissal of the second appeal.

11. This Court has carefully considered the argument of the counsel for both sides and perused the records. The respondent has marked Ex.A1, sale deed dated 22.04.1982 to show that the Executive Officer of Sri Parvatha Kasi Visveswarasamy Temple has executed the same for a valid consideration of Rs.91,800/- and even prior to Ex.A1, under Ex.A13 dated 07.01.1977, possession of the suit property was delivered by the temple authorities to the respondent since the respondent is a marketing committee, a public institution; that Exs.A3 and A5, notices both dated 27.05.1980 were issued by the respondent herein to the first defendant in the suit and also to the first appellant herein respectively and the same were also received by them. In the said notices, the respondent has pointed out that the appellants herein have encroached the suit property for which the appellants have not given any reply. Exs. A9 dated 04.02.1981, which is prior to Ex.A1 and Ex.A10 dated 24.10.1982 disclose that permission granted by HR & CE Commissioner to the Executive Officer to sell the suit property to the respondent on the ground that the said lands were not fetching optimum income. The counsel on both sides perused Exs. A9 and A10 and submitted that the courts below failed to take note of Exs. A9 and A10.

12. In view of the fact that even prior to Ex.A1, permission was accorded by HR & CE Commissioner for selling the property to the respondent, the sale is valid and the first substantial question of law is answered against the appellants.

13. In so far as the second substantial question of law namely the respondent is estopped from seeking the relief sought for in the suit is concerned, Section 115 of Indian Evidence Act can arise for consideration only if a party to proceeding has altered his position on the promise made to the other, hence, the same is not applicable to the case on hand and accordingly the second substantial question of law is also answered against the appellants.

14. In view of the findings rendered by this Court for the first and second substantial questions of law and also the discussion made above, the respondents are entitled to seek

recovery of possession and the third substantial question of law is also answered against the appellants.

15. In view of the above discussion, this Court is of the considered view that the first appellate Court is right in setting aside the decree and judgment of the trial court and interference of this Court is not warranted. With the result, the second appeal is dismissed. No costs.

16. Mr. M.V. Krishnan, learned counsel appearing for the appellants prays this Court to grant six months time to vacate and deliver vacant possession of the suit property to the respondent for which the learned counsel for the respondent has no objection. Accordingly, six months time is granted to the appellants to vacate and handover vacant possession of the suit property to the respondent, provided they file affidavits of undertaking to that effect within a period of two weeks from today.

rsh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge
Krishnagiri (with records if any)
2. The District Munsif
Hosur
3. The Section Officer
Vernacular Records Section
High Court
Madras - 600 104

+ 1 cc to Mr. S. Mohamed Yousuf, Advocate SR No. 58523

+ 1 cc to Mr. M. V. Krishnan, Advocate SR No. 58114

MS(CO)
SR/21.12.2006

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